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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,572	12/31/2003	Larry Wilson	GLH 08-899283	8998
27667	7590	06/12/2007		
HAYES SOLOWAY P.C. 3450 E. SUNRISE DRIVE, SUITE 140 TUCSON, AZ 85718			EXAMINER LEE, BENJAMIN WILLIAM	
			ART UNIT 3714	PAPER NUMBER
			MAIL DATE 06/12/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

ED

Office Action Summary	Application No. 10/749,572	Applicant(s) WILSON, LARRY	
	Examiner Benjamin W. Lee	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>09/25/2006</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Oath/Declaration

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56.

The applicant's declaration incorrectly states, "I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, S. 1.56(a)." The statement should read, "I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations, S. 1.56." (emphasis added by examiner).

Claim Objections

2. Claims 1, 2, 3, 7, and 8 objected to because of the following informalities:
 - "the state-to-error risk pattern" in claim 1 (line 6), claim 7 (line 6), and claim 8 (line 6) should be changed to --a state-to-error risk pattern-- since the claim does not provide antecedent basis for the terminology
 - "analyse" in claim 2 (line 5) should be changed to --analyze--
 - "observing" in claim 2 (line 7) should be changed to --observe--
 - "a" in each line of claim 3 (lines 3-6) should be changed to --in a--

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- “and” in claim 7 (line 6) should be deleted

Appropriate correction is required.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-6 and 8 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Re claims 1 and 8: The claims are directed toward methods, which fall under the four statutory categories of invention (i.e., process, machine, manufacture, and composition of matter). However, the processes disclosed in the claim include the judicial exception of an abstract idea (a method of reducing the frequency of industrial accidents). No physical transformation is present to establish a practical application of the abstract idea. Furthermore, the processes disclosed in the claims do not produce a useful, concrete, and tangible result. “Teaching the individual to effect critical error reduction techniques” may be useful and tangible, but is not concrete. Though an attempt may be made to teach an individual, there is no guarantee or reasonable expectation that the individual will learn the teachings. “Teaching the individual” is not substantially repeatable, and thus is not concrete. Therefore, the claim is directed toward non-statutory subject matter.

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Re claims 2-6: The claims are dependent on claim 1 and do not disclose any further method steps that correct the deficiency. Therefore, the claims are directed toward non-statutory subject matter.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation “the analysis” in line 2. There is no method step or method steps disclosed in claim 1 that provide an antecedent basis for “the analysis.” Therefore, the claim is rendered indefinite.

Claim 5 recites the limitation “they” in line 2. The only person referred to in claim 5 and claim 1 is “the individual.” It is unclear to whom “they” references. It appears “they” is intended to refer to “the individual” and has been treated as such for this Office Action. Appropriate correction is required.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-6 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Wilson (“Better Methods, Better Results”).

Re claim 1: Wilson discloses a method of reducing the frequency of industrial accidents comprising the steps of:

determining the mental state of an individual at the time of an accident or close call (see page 3, step 2);

classifying the cause of the accident as being due to the individual being in one of four hazardous mental states (see page 3, step 1);

identifying the state-to-error risk pattern (see page 3, step 3); and

teaching the individual to effect critical error reduction techniques, to avoid future occurrences of accidents (see pages 3-4, step 4).

Re claim 2: The teachings of Wilson as applied to claim 1 above have been discussed. Wilson further discloses the step of teaching comprises a step selected from the group consisted of :

teaching the individual to “self trigger” on entering a hazardous state before making the error again in the future (see pages 3-4, step 4);

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teaching the individual to analyze close calls and small errors, learning from them, to reduce the likelihood of major accidents occurring (see pages 3-4, step 4);

teaching the individual to observe others for patterns which increase risk (see pages 3-4, step 4); or

teaching the individual to work on improving their good habits (see pages 3-4, step 4).

Re claim 3: The teachings of Wilson as applied to claim 1 above have been discussed. Wilson further discloses the step of classifying comprises a step selected from the group consisting of:

classifying the individual to be a in a mental state of "rushing" (see page 3, step 2);

classifying the individual to be a in a mental state of "frustration" (see page 3, step 2);

classifying the individual to be a in a mental state of "fatigue" (see page 3, step 2); or

classifying the individual to be a in a mental state of "complacency" (see page 3, step 2).

Re claim 4: The teachings of Wilson as applied to claim 1 above have been discussed. Wilson further discloses the step of identifying comprises a step selected from the group consisting of;

identifying a critical behaviour of "eyes not on task" (see page 3, step 1);

identifying a critical behaviour of "mind not on task" (see page 3, step 1);

identifying a critical behaviour of "(moving into or being in) the line-of-fire" (see page 3, step 1); or

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identifying a critical behaviour of “somehow losing your balance, traction or grip” (see page 3, step 1).

Re claim 5: The teachings of Wilson as applied to claim 1 above have been discussed. Wilson further discloses teaching the individual to perform the analysis of claim 1 when they have smaller incidents (see page 4, top of first column).

Re claim 6: The teachings of Wilson as applied to claim 1 above have been discussed. Wilson further discloses instructing the individual to look for state-to-error risk patterns in the actions of others (see end of page 3 to the top of page 4).

Re claim 8: The teachings of Wilson as applied to claim 1 above have been discussed. Wilson further discloses teaching the individual to perform the method of claim 1 (see page 4, top of first column).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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10. Claim 7 rejected under 35 U.S.C. 103(a) as being unpatentable over Buresh et al. (“Throw Away Your Old Safety Forms”) in view of Wilson (“Better Methods, Better Results”).

Buresh et al. disclose a form for use in accident investigation (see page 62) comprising a first field for entering a description for describing the accident (see page 62, items 9, 10, and 11).

However, Buresh et al. fails to disclose text identifying the four possible mental states of an individual involved in the accident, a second field for identifying the mental state of the individual, text identifying the four state-to-error risk patterns, a third field for identifying the state-to-error risk pattern which resulted in the incident occurring, and text identifying critical error reduction techniques which might reduce the likelihood of the incident occurring again.

Wilson discloses a method of reducing the frequency of industrial accidents, as discussed in the rejection of claim 1 above. The method includes the steps of identifying the individual’s mental state, identifying the state-to-error risk pattern, and identifying critical error reduction techniques.

Therefore, in view of Wilson, it would have been obvious to one of ordinary skill in to add fields corresponding to the method of Wilson to the form of Buresh et al. in order reduce the frequency of accidents through accident investigations.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schwarz discloses an industry injury/safety, reporting and investigative system and method.

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12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin W. Lee whose telephone number is 571-270-1346.

The examiner can normally be reached on Mon - Fri (8:30 - 5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on 571-272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Benjamin W. Lee
May 17, 2007


Kathleen Mosser
Primary Examiner
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